

**TIER IV EXEMPTIONS TO MAJOR SUBDIVISION RESTRICTIONS OF SB 236**  
**FINAL PROTOCOL FOR CONSULTATION BETWEEN MDP**  
**AND SUSTAINABLE GROWTH COMMISSION**

*September 24, 2012*

**A. Protocol**

The intent of the Tier IV exemption of the law is to relieve jurisdictions of SB 236's restrictions on major subdivisions in Tier IV areas, if their established zoning and subdivision rules already adequately limit residential subdivision sufficiently so there is no need for the additional restrictions.

A county requesting exemption from the Tier IV restrictions on major subdivisions must provide MDP with information to show that this intent is met. Specifically, the subdivision and zoning requirements in the jurisdiction's cumulative Tier IV area must result in an actual overall yield of not more than one dwelling unit per 20 acres; and MDP must verify the overall actual yield in writing to the jurisdiction after consultation with the Sustainable Growth Commission.

In summary, MDP will use the following procedure for the required consultation with the Commission.

- I. MDP advises Commission Chair that it has received a request for a Tier IV exemption (immediately following request receipt)
- II. MDP Advises Commission Chair of its initial determination regarding actual overall yield and qualification of the county for the Tier IV exemption, as soon as MDP has completed its analysis (within 45 days of MDP's receipt of county request or, if additional information is required for a determination, within 45 days of MDP's receipt of the necessary information from the county)
- III. Commission Chair determines if the Commission wishes to receive a presentation from the county and if so, advises MDP and the county
- IV. Consultation between Commission and MDP
  - A. MDP presents its analysis of a county's Tier IV exemption request to the Commission, summarized here (additional details are provided in section B. of this paper)
    1. Data received from the county
    2. Conformance of county's Growth Tier boundaries with statutory guidelines
    3. Evaluation of zoning and subdivision regulations' performance in Tier IV areas
    4. Estimates of past, recent and expected future development yields in Tier IV areas
    5. MDP's initial determination of actual overall yield and qualification of the county for the Tier IV exemption
  - B. County presents information supporting their exemption request to the Commission (if Chair has so requested)
    1. Presentation and supporting materials submitted to MDP for the Commission two weeks before the Commission meeting
    2. Presentation to Commission limited to 20 minutes
  - C. Commission comments and recommendations

1. Commission members discuss information received and MDP's initial determination, make comments and ask questions of MDP and/or the county
  2. Commission determines if it has comments or recommendations to make to MDP regarding initial findings or final determination about actual overall yield and qualification of the county for the Tier IV exemption
  3. In addition to verbal communication during the meeting, the Commission provides MDP with written comments and recommendations within one week of the meeting about qualification of the county for the Tier IV exemption, for MDP's consideration in making its final determination
- V. MDP makes final determination about actual overall yield and qualification of the county for the Tier IV exemption, and provides its conclusions to the county in writing (within 90 days of MDP's receipt of county request or, if additional information is required for a determination, within 90 days of MDP's receipt of that information from the county). Comments and recommendations from the Commission will be incorporated into MDP's official communication to the local government.

**B. *Additional Detail about MDP's Analysis and Determinations***

MDP will provide information on the following as relevant to its findings and determinations:

1. Tier IV area must be delineated in a manner consistent with the law, including each of the 5 types of lands comprising Tier IV (lands not planned for public sewer and consisting of one or more of the following: 1) Priority Preservation Areas; 2) Rural Legacy Areas; 3) land planned and zoned for preservation and/or conservation; 4) state & local protected land; and 5) or areas dominated by agricultural and/or forest land use)
2. The next step is to examine the predominant zoning districts that make up the Tier IV Area, to determine if the Area as a whole might meet the 1 lot or fewer per 20 acres threshold. Determination will consider
  - a. Zoning and subdivision rules governing lot yields from developable properties
  - b. Performance of zoning and subdivision rules, based on data provided by the county demonstrating actual lot yields for recent subdivisions in relevant zoning districts (per MDP's Guidelines). Assessment of performance will be supplemented by MDP's parcel and zoning data for corroboration
3. If zoning and subdivision rules are such that the cumulative Tier IV Area cannot meet the 1 lot or fewer per 20 acre threshold, the Area will not qualify for the exemption.
4. If performance of the jurisdiction's zoning and subdivision rules indicates that actual overall yield in the Tier IV Area may satisfy the threshold, MDP will evaluate the county's estimate of actual overall yield and make its own estimate as appropriate, considering:
  - a. Existing residential lots in zoning districts within Tier IV;
  - b. Excluding from counts of existing lots those that do not reflect the ability of county plans and established zoning and subdivision rules to limit residential subdivision and preclude the need for the additional restrictions. Such lots to be excluded might include, for example, lots in old

historical developments encompassed within the boundaries of larger planning areas (like PPAs and RLAs) which were subdivided before comprehensive plans and zoning for land preservation and resource conservation in the Tier IV Area were in place; and family or other lots subdivided under conservation easement-specific terms from permanently protected properties;

- c. Estimated subdivision yields from remaining private unrestricted properties in Tier IV, based on zoning and subdivision rules and performance;
- d. Excluding from counts of estimated subdivision yields potential future lots that could be subdivided from permanently protected properties under conservation easement-specific terms;
- e. Current and projected protected lands in the Tier IV area, in the forms of existing conservation easements or public lands acquired or likely to be acquired for conservation purposes
- f. In light of the preceding statistics, estimated actual overall yield in the cumulative Tier IV Area, calculated as:

$$\frac{\text{(Existing residential lots + Expected future residential lot yields)}}{\text{Total land area comprising Tier IV}}$$

- 5. Assessment of local Priority Preservation Elements of Comprehensive Plans, other comprehensive plan elements, and other local policies and programs likely to affect future land use in Tier IV areas;
- 6. In light of all of the above considerations, MDP must make a final determination if established zoning and subdivision rules already adequately limit residential subdivision sufficiently (to 1 lot or fewer per 20 acres), precluding the need for the additional restrictions on major subdivisions that would be imposed by the law.